

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COOK PRODUCTIONS, LLC,

Plaintiff,

V.

THOMAS SWANICKE, et al.,

C16-1884 TSZ

MINUTE ORDER

Defendants.

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion to permit alternative mail service on defendants Steve Austin and Tyree Smith, docket no. 36, is GRANTED in part and DENIED in part. The Federal Rules of Civil Procedure authorize service in any manner provided by the law of the state in which the Court sits. Fed. R. Civ. P. 4(e)(1). Washington permits service via mail where the plaintiff sets forth the following facts: (1) that the defendant could not be found in Washington after a diligent search; (2) that the defendant was a resident of Washington; and (3) that the defendant had either left the state or concealed himself within it, with intent to defraud creditors or avoid service of process. *Pascua v. Heil*, 126 Wn. App. 520, 526 (2005) (citing RCW 4.28.100(2); CR 4(d)(4)).

(a) As to defendant Tyree Smith, plaintiff has set forth facts establishing all of these requirements and therefore, its motion to permit alternative mail service is GRANTED. Plaintiff attempted to serve defendant Smith at his home in Washington on six occasions over an approximately two week period and was repeatedly denied access. Decl. of David Lowe, docket no. 37, ¶ 3; Summons Returned Unexecuted, docket no. 34. Under these facts, the Court finds that service on defendant Smith by mail is warranted.

(b) As to defendant Steve Austin, the Court is not satisfied that defendant Austin is intentionally avoiding service. Over a period of twelve days, the process server attempted service on six separate occasions at defendant Austin's home. Summons Returned Unexecuted, docket no. 33, at 2. On each occasion, the process server heard dogs barking inside the house but received no answer at the door. *Id.* There is no indication that anyone other than the dogs was home during the times the process server attempted service. *See id.* (noting that on May 1, 2017, during plaintiff's third attempt at service, there were "no visible changes on property," and that on May 8, 2017, during plaintiff's sixth attempt at service, there was "no sign of anyone being home."). Based on the current record, the Court cannot reasonably rule out the possibility that plaintiff's difficulties in effecting personal service were the result of defendant Austin being away from his home for entirely legitimate reasons unrelated to plaintiff's attempts to serve him. Accordingly, plaintiff's motion to permit alternative mail service on defendant Austin is DENIED.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to defendant Thomas Swanicke pro se via U.S. mail at 8203 86th Ave. NE, Marysville, WA, 98270.

Dated this 25th day of May, 2017.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk